

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

77

1354
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UNITED STATES COURT OF APPEALS
For the Second Circuit

No. 77-1354

United States of America,

Appellee,

against

AMREP Corporation, RIO RANCHO ESTATES, Incorporated,
ATC REALTY Corporation, Howard W. Friedman, Chester
Carity, Henry L. Hoffman, Daniel Friedman,

Defendants-Appellants.

Appeal from Judgment of the United States District Court
for the Southern District of New York

APPELLANTS' REPLY BRIEF



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APPELLANTS' REPLY BRIEF

Preliminary Statement

The principal argument raised by the prosecution is that the appellants allegedly suffered no prejudice from the inclusion of a juror who was not a resident of the district. As our original brief demonstrates, this is irrelevant. Appellants have a constitutional right not only to a fair and impartial jury, but also to a jury of the "State and district" in which crimes were allegedly committed. It is undisputed that this latter right was denied to appellants, despite their own diligent efforts to preserve it. The authorities relied on by the prosecution did not discuss the constitutional issue, and are therefore not in point.

Our main brief anticipated and dealt with most of the arguments raised by the prosecution. However, we did not

anticipate the prosecution's startling argument (Br., p. 10) that appellants were not denied their right to a jury of the district because their alleged crime "transpired . . . [in] the Northern District of New York." This reply brief is submitted primarily to refute this untrue and baseless statement.

I

THE APPELLANTS WERE NOT CONVICTED
OF A CRIME WHICH WAS COMMITTED IN
THE NORTHERN DISTRICT OF NEW YORK

The only evidence cited by the prosecution in support of its assertion is a tape (Ex. 669a) of a sales training session conducted in Denver, Colorado by one Sid Hollander. The only portion of the tape referring to the Northern District of New York is as follows:

I took a team of nine people in Syracuse, New York. Not one of them had ever been in the land business before except the manager. There were four women on the team. One was a former, was still a secretary, and executive secretary for an executive over at Bristol-Myers. Another one was a hairdresser and beautician. Another one is a 22-year-old housewife and mother who had to go out to help supplement the family's income, and the other one had done some selling before--Avon. And of the five men on the team, only one was a professional salesman. And he was the one who was on the bottom of the heap and did worse than all the rest because these other people were too dumb to know that it couldn't be done, so they went out and did it.

So, they were just too dumb to know that it couldn't be done, so they went and did it. So the first month that Syracuse was in operation... [Periods in transcript] And Mr. Smith, you know this to be a fact. These

are not stories that I'm telling you. They wrote \$175,000 worth of business. The second month they were in business, they're already down to 160,000. Next month, I figure they'll do about 140,000. Then I'll have to go back in there and tell them not to be smart any more, and they'll go back up to 175,000.

(A 10545-46)*

This portion of the tape makes no reference to any unlawful action by appellants in the Northern District. In fact, it makes no reference to appellants, or to any unlawful act by anyone. There is nothing in the tape which even suggests that a federal statute was violated in the Northern District of New York.

The prosecution's brief in this appeal from denial of a post-trial application marks the first time that any suggestion has been made that appellants committed a crime in the Northern District. Not one count of which appellants were convicted involved mailings to or from, advertisements published or broadcast in, or other conduct in the Northern District. The prosecution's bill of particulars alleged that the misconduct complained of occurred "in places other than the Southern District of New York including the boroughs of Brooklyn, Queens and Richmond in New York and Fairfield County in Connecticut" -- but made no mention of the Northern District. The prosecution's present assertion that appellants were convicted of a crime in the Northern District is irresponsible.

* This reference is to the joint appendix on the direct appeal in this case.

Conclusion

For the foregoing reasons and those stated in appellants' previous brief, appellants' convictions must be reversed and a new trial granted.

Dated: New York, New York
October 7, 1977

Respectfully submitted,

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